MUHAMAD BIN HASHIM (BAPA NOOR AZLAN BIN MUHAMAD (SIMATI) BERTINDAK BAGI PIHAK TANGGUNGAN)

v.

TEOW TEIK CHAI & ANOR.

HIGH COURT MALAYA, PENANG
TUAN JEFFREY TAN JC
[CIVIL APPEAL NO: 12-159-1994]
13 NOVEMBER 1995

TORT: *Dependency claim - Civil Law Act 1956, s. 7 - Loss of support - Meaning of - Whether proof of support for everyday subsistence necessary - Whether person with independent income a "dependent" under s. 7 - Whether loss of support proved.*

The appellant appealed against the learned Sessions Court Judge's decision in dismissing the appellant's dependency claim made under s. 7(3) of the Civil Law Act 1956, which claim arose from a running down action, wherein the appellant lost his 21 year old son upon whom he was dependant for support.

The Judge in dismissing the claim relied on the appellant's evidence that the RM700 given to him by the deceased was used for family expenses including the deceased's siblings' food and schooling, and that the appellant was himself earning RM500. In concluding, the Judge found that the appellant was not a dependent nor depended on the deceased for support, and had failed to prove the loss of support.

Held:

[1] Support means the pecuniary provision which furnishes a livelihood, and the loss of support means the pecuniary benefit lost, a consequence of the death of the provider of the support.

[2] A claim by the persons qualified under s. 7(2) for loss of support is nothing more than a claim for financial loss; exemplary damages cannot be obtained in a claim made for and on behalf of the dependents of a deceased.

[3] The test for support is the direct benefit to the claimant, not vicarious, but the claimant need not prove he was dependent on the financial support.

[4] A requirement that a claimant must be dependent on the support from a deceased will not be giving the natural meaning to plain and ordinary words in s. 7(3). The finding by the learned Judge that the loss of support was

not proved as the appellant was not dependent on the deceased could not be supported as the appellant's direct benefit from the RM700, as a member of that family was never considered.

[Appeal allowed; Sum of RM24,000 awarded as future loss of support].

Cases referred to:
Chan Chin Min & Anor. v. Lim Yok Eng [1994] 3 CLJ 687 ***(refd)***
Marappan a/l Nallan Koundar & Anor. v. Siti Rahmah binte Ibrahim [1990] 1 CLJ 32 ***(refd)***
Low Kin Yan v. Guat Hian & 7 Ors. [1960] 26 MLJ 261 ***(refd)***
Davies v. Powell Duffryn Associated Collieries Ltd. [1942] AC 601 ***(refd)***
Mariayee v. Mohamed-Nasir [1985] 1 MLJ 427 ***(refd)***
Burgess v. Florence Nightingale Hospital [1955] 1 QB 349 ***(refd)***
Sykes v. North Eastern Rail 32, LT 199 [1875] 44 LJCP 191 ***(refd)***
Tan Boon Kean v. PP (unreported - FC delivered on 9 Nov. 1995) ***(refd)***
Nam Thiam Siew v. Chuang Wai Lan [1959] 25 MLJ 126 ***(refd)***

Legislation referred to:
Civil Law Act 1956, ss. 7(2), 3, 3(iv)(d), (3A), 8(5), 28(2)(d)(i)

For the appellant - D.P Rajah, M/s. Charles Rajah & Co.
For the respondent - R. Rajendran, M/s. V.P. Nathan & Co.

JUDGMENT

Jeffrey Tan JC:

This was an appeal by the appellant/plaintiff against the decision of the Butterworth Sessions Court given on 30 September 1993, in a running down action, in which the appellant had lost his 21 year old son (the deceased) upon whom he was dependent for support, in a road accident, his claim being a dependency claim under s. 7(3) of the Civil Law Act 1956 (the Act).

At the conclusion of the trial, the Court held the respondents 100% liable for the motor accident, awarded the appellant the sum of RM1,300 (towards funeral expenses) and the costs of the action, but dismissed the appellant's "dependency claim". The trial Court however provisionally assessed the years' purchase as 8 years at RM250 per month. The appeal was against the dismissal of the dependency claim.

When the appeal was heard, Counsel for the respondents did not disagree with the trial Court's provisional assessment, but he said there was no evidence of the appellant's dependency for the grant of the provisional award.

That the appellant, the father of the deceased, was a person qualified to benefit in an action under s. 7(2) of the Act was obviously undeniable. To succeed on his claim for the loss of support, it was however incumbent upon the appellant to prove the financial loss he sustains as a dependent and not in any other way (see *Chan Chin Min & Anor. v. Lim Yok Eng* [1994] 3 CLJ

687 at page 694). Indeed it was precisely for that reason that the Supreme Court (in *Chan Chin Min*) reduced by half the sum of RM750 found by the High Court as the "monthly loss of support", as the plaintiff who claimed her deceased son gave her RM750 a month admitted in her evidence that she spent half of the RM750 on herself and the other half on the deceased's siblings who were persons not qualified to benefit from the action. On the multiplier of 16 years in s. 7(3)(iv)(d), the Supreme Court (Edgar Joseph Jr. SCJ dissenting) furthermore held that a Court can take into account contingencies, such as the marriage of an unmarried child, and taxed down the number of years purchased, imparting thus a statement of law *stare decisis* on this Court that the multiplier of 16 years (in s. 7(3)(iv)(d)) was not strict nor rigid.

In the case of a claim for damages for personal injuries where the person injured was of the age 30 and below, s. 28A(2)(d)(i) of the Act provides an identical multiplier of 16 years, but that multiplier was construed, quite differently, by the Supreme Court in *Marappan a/l Nallan Koundar & Anor. v. Siti Rahmah binte Ibrahim* [1990] 1 CLJ 32, per Gunn Chit Tuan SCJ. (as he then was) as follows:

> in assessing damages for loss of future earnings the Court shall take into account that in the case of a person who was of the age of thirty years or below at the time when he was injured, the number of years' purchase shall be 16.

The above Supreme Court decisions supposedly indicated, but certainly not so, that (i) the apex Court of the land was not consistent on the same multiplier, and (ii) *Marappan,* although momentarily lacking the kudos of *Chan Chin Min,* was the alternate definitive ruling nonetheless equally binding on the trial Court and this Court.

In *Chan Chin Min* it was a claim for damages for loss of support by a dependent, while in *Marappan* the claim was for damages concerning personal injuries suffered by the injured party. In the case of a dependent, the support from the deceased, in the learned words of Peh Swee Chin SCJ, "would either cease or be reduced considerably on the almost invariable contingency of subsequent marriage of such unmarried child", an observation truely reflective of reality as the taking on by marriage of an additional dependent would usually burden further the same resources, thus affecting the ability to maintain a prior level of support. However, in a personal injuries claim, damages for the loss of future earnings is awarded to an injured party for the loss to his income or earning capacity as a result of the injury suffered, a loss that is not affected by the contingencies affecting the ability to maintain the degree of support to a dependent.

The Supreme Court decisions were therefore entirely complementary; in *Chan Chin Min* it was a claim by a dependent for loss of support where the number of years' purchase was taxed down, while in *Marappan* it was a claim by

the injured party (for himself) for loss of income where the number of years' purchase, per Gunn Chit Tuan, SCJ (as he then was) "shall be 16".

Reasons were given by the learned trial Judge on why he rejected the appellant's claim of dependency. In particular the learned trial Judge quoted the following evidence given by the appellant:

> Duit RM700 ini (yang diberi oleh simati) untuk belanja kedua-dua keluarga iaitu makan, minum serta sekolah anak-anak. Saya juga sendiri bekerja dan dapat pendapatan RM500. Ya, saya tidak bergantung pada pendapatan simati. Ya, saya menuntut RM700 ini untuk keluarga saya dan anak-anak saya.

and held that the "kehilangan wang yang diberi oleh simati kepada plaintif tidak termasuk dalam tuntutan kehilangan yang boleh dituntut di bawah s. 7.

However the above quoted evidence was but a part of the appellant's entire testimony which was otherwise a story of his reliance and dependence on the RM700 from the deceased, seen so from the following excerpts:

> Anak simati ini berulang alih kerja tiap-tiap hari ... Tiap-tiap hari dia balik antara 6 - 7 ptg ... Boleh kata tiap-tiap hari dia ada di rumah, kecuali dia kerja malam. Dalam seminggu 5 malam dia kerja malam ... saya tidak tahu berapa pendapatan dia dari usaha ini ... yang dia beri RM700 tiap-tiap bulan itu adalah untuk membantu keluarga. Setiap keluarga belanja RM500. Dia beri duit RM700 pada diri saya sendiri. Duit RM700 ini untuk belanja kedua-dua keluarga iaitu makan, minum serta sekolah anak-anak. Saya juga sendiri bekerja dan dapat pendapatan RM500. Ya, saya tidak bergantung pada pendapatan simati. Ya, saya menuntut RM700 ini untuk keluarga saya dan anak-anak saya ... saya tak setuju saya sendiri kena menanggung kedua-dua keluarga dan tidak bergantung pada anak ... Ya, gaji saya RM500 semasa anak saya meninggal dunia. Duit ini tidak cukup untuk tanggungjawab saya pada keluarga. Kalau simati tidak beri saya RM700 saya tidak dapat bertanggungjawab pada keluaga saya ... Bayaran RM700 itu memang mustahak bagi diri saya ... Ya, 12 orang ini saya yang bertanggungjawab.

The trial Court did not exactly say so, but its grounds expressed its finding that the appellant was not a dependent nor depended on the deceased, and being so the appellant had failed to prove the "loss of support".

The word "dependent" is alien to s. 7 of the Act, but who is a "dependent" (see s. 8(5)) is clearly identified in s. 7(2):

> Every such action shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death has been so caused and shall be brought by and in the name of the executor of the person deceased.

The persons qualified under s. 7(2) claim for compensation for the "loss of support" they suffer as a result of the death of the provider of the support. Where death did not result from a wrongful act, they have no beneficial claim; it is the injured party who has the right to claim for damages for the injuries he suffered and for any loss of earnings under s. 28A.

In the context of s. 7, "support" means the pecuniary provision which furnishes a livelihood, a source of means of living, subsistence, sustenance, maintenance or living, and the "loss of support" means the pecuniary benefit lost, a consequence of the death of the provider. This was said plainly by Peh Swee Chi SCJ, in *Chan Chin Min* at page 694 thus:

> loss of support is for all practical purposes translated into financial loss sustained by a dependent

after his Lordship at page 693 had explained 'the introduction of the words "loss of support" has not added anything new to the state of the law, but only incorporated what the Courts had always decided before such addition that such damages were in fact loss of support.

That the state of law before the amendment of 1 October 1984 was entirely financial, is best exemplified in *Low Kin Yan v. Guat Hian & 7 Ors.* [1960] 26 MLJ 261, where Thompson CJ said, "the husband was maintaining the wife and children, and as a result of his death they have lost that maintenance", and the truism in the comment by Lord Wright in the House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd.* [1942] AC 601 at p. 6/7, that "there is no question here of what may be called sentimental damages, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence ...".

Thus a claim by the persons qualified under s. 7(2) for "loss of support" is nothing more than a claim for financial loss; exemplary damages cannot be obtained in a claim made for and on behalf of the dependents of a deceased (see *Mariayee v. Mohamed-Nasir* [1985] 1 MLJ 427). Section 7(3A) introduces however a new head of non-pecuniary damages called bereavement, presently set at RM10,000, to the spouse of the deceased or the parents of the deceased who was a minor and never married.

Since it was all a matter of a financial loss, it was asked if it was necessary that the financial support (lost) was depended on by the appellant for his everyday subsistence as to fall within the ambit of "loss of support". Would a person blessed with an independent income and depended not on the money given by the deceased, but otherwise qualified, be any less a "dependent" under s. 7?

In *Chan Chin Min,* the Supreme Court concluded "that a plaintiff can only claim in such a case for financial loss which he sustains as a dependent and not in any other way". Lamenting the paucity of supporting authorities, the Supreme Court reviewed the decisions in *Burgess v. Florence Nightingale Hospital* [1955] 1 QB 349 (where the husband and wife were both professional dancing partners and the wife died due to the negligence of a surgeon; the Court held that the basis for damages was that the benefit must be a benefit arising from the relationship as husband and wife, and allowed a modest sum

for the deceased's wife's contribution to the joint living expenses but the claim for loss of services of his wife as a dancing partner was refused) and *Sykes v. North Eastern Rail* 32, LT 199; [1875] 44 LJCP 191 (where the deceased's son was prior to his death working for his father who fully paid the deceased; the Court held when claiming for loss of support, that the father though normally entitled to claim such loss of support, could not claim it as what the father lost was the benefit of fully paid services in his capacity as employer and not as dependent to his son) and expressed its regret on the failure at the trial to cite those authorities to the learned trial Judge. In his dissenting judgment, Edgar Joseph Jr. SCJ at page 698 enunciated it no differently:

> In my view, the plain, ordinary and grammatical meaning of the expression "any loss of support suffered" appearing in s. 7(3), must refer to the loss of support suffered by "the party for whom and for whose benefit the action is brought. In other words, the loss suffered must be personal to the class of dependents specified in s. 7(2) so that a loss suffered by any other person not falling within that class must be excluded.
>
> Having regard to the mother's admission aforesaid, the loss of support suffered by her was RM375 p.m. For the Court to increase the value of the loss of support to RM750 p.m. by adding the sum that was spent by the mother on the three schoolgoing children would amount to departing from the plain, ordinary and grammatical meaning of the statutory language of s. 7(2).

The claimant must therefore be the direct beneficiary of the financial support, and contrary to the impression conveyed by the head note in the report on *Chan Chin Min,* the Supreme Court did not sustain the conclusion of the trial Judge solely because half of the RM750 p.m. was for the benefit of the deceased's 3 siblings and not the claimant, and not (the impression conveyed) because support is restricted to food and sustenance. The test is the direct benefit to the claimant, not vicarious, but the claimant need not prove he was dependent (contrary to proof that he was a qualified person) on the financial support. Nevertheless, the proof of indigent circumstances, and therefore a greater likelihood of dependence on the deceased, will give much truth to a claim of the support that was lost.

Apart from the enunciation by both learned Supreme Court Justices in *Chan Chin Min,* the latest on the interpretation of statutes came from Justice Mohd. Azmi SCJ in *Tan Boon Kean v. PP* (An unreported decision of the Federal Court delivered on the 9 November 1995):

> On the interpretation of statutes, the duty of the Court is limited to interpreting the words used by the legislature and it has no power to fill in any gaps disclosed (see *Magor & St. Mellons RDC v. Newport Corporation* [1952] AC 189 at 191). The Court has no power to change any words used by the legislature. Further,

where the words are simple and clear, it is the duty of the Court of law to give these words their natural meaning even though such interpretation leads to apparent anomalies.

Therefore, a requirement that a claimant must be dependent on the support from a deceased will not be giving the natural meaning to plain and ordinary words in s. 7(3). The anomaly in the instant case was however obvious; given the money for his personal benefit the appellant was free to spend it, prudently or licentiously, as he so wished; but given to him for the benefit of unqualified persons, it was not support within the meaning of s. 7(3).

That being so, the finding by the learned trial Judge that the "loss of support" was not proved as the appellant was not dependent on the deceased could not be supported. The appellant as the head of his two families must naturally agree he was ultimately responsible for the maintenance of his two families. The appellant said the deceased gave him RM700 p.m. towards the deceased's immediate family's expenses; but the appellant's direct benefit from the RM700 p.m., and the appellant as a member of that family must have derived some, was never considered.

The amount of actual support received, the direct benefit to a "dependent", and the amount of damages are of course matters pre-eminently for a trial Court to decide, and per Thompson CJ in *Nam Thiam Siew v. Chuang Wai Lan* [1959] 25 MLJ 126 "a matter of assessment and not a matter of pure calculation". The trial Court provisionally assessed the years' purchase as 8 at RM250 p.m. Considering the deceased was 21 years old and single, and was drawing a salary of at least RM565 p.m. the Court found the trial Court's provisional assessment of RM250 p.m on a multiplier of 8 years as the loss of support was reasonable; any difference between the trial Court's provisional assessment and this Court's assessment was also neglible and did not warrant any interference.

The Appeal was allowed: the respondent was ordered to pay to the appellant the sum of RM24,000 (RM250 x 96) as the future loss of support.